IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2816 OF 2004
IN
APPEAL (LODGING) NO.509 OF 2004
IN
SUMMONS FOR JUDGMENT NO.468 OF 1998
IN
SUMMARY SUIT NO.916 OF 1998

Dilip Dahanukar ....Appellant

V/s.

Sajjan India Ltd. & Anr. ....Respondents

Mr.Cyrus Ardeshir i/b M/s.Madekar & Co. for the Appellant.

Mr.A.N. Jakhodi for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 7TH FEBRUARY, 2005.

P.C. :

1. This is the Appellant/Defendant No.2's Notice of Motion seeking condonation of delay of 1523 days in filing the Appeal. The Appeal is against the order of the learned single Judge dated 17th January, 2000.

2. By the impugned order, the learned single Judge held that there was no defence to the

Plaintiffs/Respondents claim which remained uncontroverted. There was no affidavit in reply to the Summons for Judgment. The Appellant was represented by his advocate who did not raise any defence even orally. The learned single Judge therefore made the Summons for Judgment absolute with costs and the suit was decreed as prayed.

3. It was submitted that the Appellant was informed for the first time about the decree only on 7th August, 2004. The story is ex-facie false.

4. The Appellant is a major shareholder in Defendant No.1 / Respondent No.2 company. He personally holds 22% of the paid up capital of the company. He has refused to disclose the share holding of his family and associates despite being asked to do so. The Appellant and the Company were represented at the hearing of the Summons for Judgment by common solicitors and advocates. The change in advocates on behalf of the Appellant is to set up a false case to deny knowledge of the decree.

. Respondent No.1/Plaintiff by a letter dated 11th September, 2001 addressed to the Appellant referred to the decree and called upon Respondent No.1

to make payment in respect thereof. The Appellant has alleged that he was not residing at place where the letter was addressed. He alleged that he had been residing at his parent's house as his building was in the process of being demolished and being reconstructed. It is difficult to believe that the Appellant would not have made any arrangements for forwarding his mail even assuming what he has stated is true.

. Proceedings were filed on behalf of the Company/Respondent No.2 before the B.I.F.R. It is impossible to believe that the Appellant was not aware of the said proceedings. By an order dated 18th November, 2002, the B.I.F.R. recorded the fact that Respondent No.1 had filed the above suit, which was decreed and that Respondent No.1 had sought permission of the B.I.F.R. to execute the decree. It is pertinent to note that the B.I.F.R. also passed the strictures against the Appellant and Respondent No.2.

5. It is clear to us therefore that the Appellant accepted the decree and therefore, did not file an Appeal against the same for a period of almost five years.

6. In the circumstances, the Notice of Motion is dismissed.